



Office of the Attorney General
State of Texas

September 4, 1998

DAN MORALES
ATTORNEY GENERAL

Ms. Susan G. Spinks
Associate General Counsel
Texas A&M University System
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR98-2123

Dear Ms. Spinks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117803.

The Texas Transportation Institute (the "institute"), an agency of the Texas A&M University System, received a request for information relating to the closure of Texas Highway 349 in Martin County, Texas on May 19, 1998. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which the state is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, the governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.*

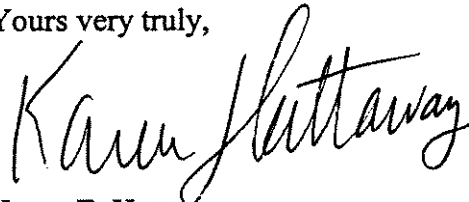
Having considered the totality of the circumstances presented in this case, we find that the institute reasonably anticipates litigation relating to a traffic accident that occurred on Texas Highway 349. Our review of the submitted documentation confirms your contention that the requested information is related to the anticipated litigation. Therefore,

we conclude that the institute may withhold the information from disclosure pursuant to section 552.103(a) of the Government Code.

In reaching this conclusion, however, we assume that the opposing party in the anticipated litigation has not previously had access to the information at issue; absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly distinguishable.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 117803

Enclosures: Submitted documents

cc: Mr. Michael McLeaish
Attorney at Law
123 E. 4th Street
Odessa, Texas 79761
(w/o enclosures)